

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 386 OF 2007

Sarfaraz Nasir Khan ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. Amin Solkar, Advocate for the applicant.

Mr. U.V.Nikam, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 2ND MARCH, 2007.

P.C.

. Heard Mr. Amin Solkar, learned Counsel for the applicant and Mr.U.V. Nikam, learned APP for the State. The applicant, who is accused No.3, seeks to be released in Crime NO. 167/2006 registered at Kurla Police Station for the offence punishable under Section 302 r/w section 34 of Indian Penal Code.

2. The prosecution case, in brief, is that accused No.1 booked a room with G.S.K. hotel Kurla on 22/4/2006. In the morning of 23/4/2006 the first informant Annup Dubey, who was a waiter in the hotel, had seen accused No.1 along with a burkha clad woman coming out of room No. 201. At about 2 P.M. the complainant, saw the accused Nos. 1 and 2 going out and

coming back within 15 to 20 minutes. At about 4 P.M. deceased Rajesh came to the hotel. Accused nos. 1 and 2 took him in the room and all the three persons were seen in the room. After about 45 minutes accused Nos. 1 and 2 were seen leaving the hotel but the deceased was not seen. At about 10 p.m. the complainant knocked the door, which was closed from inside but there was no response. Thereafter the police was called and dead body of the third person, who had come there at about 4 p.m. was found. As per the post mortem report deceased Rajesh had died due to smothering. After that a report was lodged by the first informant. On 1st day accused No.1 and 2 came to be arrested. According to the prosecution, on the next day another employee of the hotel, namely Tonny disclosed that on the relevant day at about 2 p.m. he had seen 4 persons in the room No. 201 and the present applicant was one of them. All the four occurred were identified by him during the test identification parade.

2. Admittedly, there is no eye witness of the incident. The case is based on circumstantial evidence only, and as per the F.I.R. at 4 p.m. accused Nos. 1 and 2 and the deceased were seen entering into the room

but only accused Nos. 1 and 2 were seen leaving the hotel. The present applicant, who is accused No.3, was seen in the room at about 2 p.m. Admittedly, there is no material to show that the present applicant was also present in the room at about 4 p.m. when the deceased had come there. Taking into consideration these circumstances, I find that case against the present applicant can be distinguished from the case against accused Nos. 1 and 2. Therefore, bail may be granted to him.

3. The applicant be released on his executing P.R. of Rs. 20,000/- with a surety in like amount with the condition that he shall not tamper with prosecution evidence.

(J.H. BHATIA, J.)